Maintenance of the Hillcrest Forest Service Road - Southern Vancouver Island

Complaint Investigation 970099

April 1999
FPB/IRC/13

Summary

This report concludes the Board's investigation of a complaint about maintenance of the Hillcrest forest service road in the South Island Forest District.

Nature of the Complaint

A resident of Hillcrest Road, a forest service road near Lake Cowichan village on Vancouver Island, complained that the road was not adequately maintained by the South Island Forest District and industrial users during the winter of 1996-97. The resident maintained that this had resulted in unsafe conditions for those living on the road. He asked that the road be graded before and after every timber sale and that the Ministry of Transportation and Highways take over responsibility for maintaining the road.

Investigation Findings

The investigation examined three issues:

- Who was responsible for surface and structural maintenance of Hillcrest Road?
- Did those responsible for maintaining the road comply with Code requirements?
- What role does or should government agencies other than the Ministry of Forests have in the maintenance of forest service roads with significant public traffic?

Hillcrest Road provides access to several timber sales under the Small Business Forest Enterprise Program (SBFEP). It is also used by MacMillan Bloedel Ltd. and several other companies to access logging operations on private land. Pacific Forest Products is one of the most active users.

Hillcrest Road also provides access to four residences, the Chemainus River Provincial Park and is a popular route for trail bikes and recreational four-wheel drive vehicles. Like many older forest service roads on Vancouver Island, it has deteriorated significantly over many years.

As is common practice on many forest service roads, the Ministry of Forests delegated responsibility for surface maintenance to the "primary user", MacMillan Bloedel, even though the company had not been active on the road for many years.

MacMillan Bloedel in turn made contractual arrangements with the other holders of road use permits ("secondary users"). Under these contracts, the secondary users agreed to maintain the road during the period of their use or to reimburse MacMillan Bloedel for maintenance costs based on the volume and distance of their hauling. The district manager retained responsibility for major structural repairs.

During the winter of 1996-97, some secondary users failed to carry out the maintenance responsibilities specified in their contracts with MacMillan Bloedel. A district inspection in March 1997 identified problems with the road. The district instructed the users to meet and come to a maintenance agreement. They did so in July 1997, and the required surface maintenance was completed. Structural repairs were carried out by the district and were completed in October 1997. The complainant was satisfied with these repairs.

The Code requires that those responsible for maintaining forest service roads ensure that they can be safely used by industrial users. There is no requirement to ensure that the roads are safe and passable for public traffic. Unlike most forest service roads, Hillcrest Road is subject to significant public use by residents and recreational traffic.

Despite the diversity of users, responsibility for maintaining Hillcrest Road remains with the Ministry of Forests district manager and industrial users to which that responsibility is delegated. The Ministry of Transportation and Highways will not provide funding assistance for maintenance of forest service roads that provide access to residences if they are also used for industrial purposes. BC. Parks has no budget for road maintenance outside park boundaries.

Government is aware of and has recently taken steps to attempt to address these issues. In early 1999, the Resource Tenures and Engineering Branch of the Ministry of Forests circulated a discussion paper entitled "A Framework for Managing Forest Service Roads". The paper describes several options for allocating responsibility for maintenance of forest service roads to ensure safe public travel.

Conclusions

1. The district delegated responsibility for surface maintenance of Hillcrest Road to MacMillan Bloedel Ltd. and retained responsibility for structural repairs.

2. Some companies using the road failed to conduct surface maintenance in accordance with their contracts with MacMillan Bloedel. Although MacMillan Bloedel made little use of the road in 1996-97, it was the designated primary user, and was responsible for surface maintenance. MacMillan Bloedel did not comply with Code requirements.

3. The non-compliance with Code requirements for road maintenance was significant to the complainant, but did not result in environmental damage.

4. The district complied with Code requirements. District staff noted deficiencies in the road surface and structure, and issued instructions to users to come to an agreement for surface maintenance. District staff also identified and remedied structural deficiencies on the road.

5. The complainant's concerns were satisfied by the work undertaken by the district.

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6. Several factors result in limited maintenance of publicly travelled forest service roads. These include:

    - The Code requires forest service roads to be kept safe for industrial users but does not require maintenance of these roads to ensure public safety;
    - Ministry of Forests usually delegates responsibility to those industrial users;
    - Public use of forest service roads primarily occurs in summer months when industrial users are absent and little surface maintenance occurs; and
    - Government funding cuts are further restricting maintenance on publicly travelled forest service roads.

7. The public—including recreational and residential users—travel on forest service roads at their own risk. The Board concludes that the government needs to act to ensure that publicly travelled forest service roads are adequately maintained. The Ministry of Forests' 1999 discussion paper "A Framework for Managing Forest Service Roads" is a good start.

Recommendations

The Board makes the following recommendations:

1. District managers should:

    a) annually review designation of responsibility for maintenance of forest service roads to ensure that those responsible for maintenance have an active presence on the road during the operating season; and

    b) notify those responsible for maintenance when small business timber sales are awarded and road use permits are issued.

2. The Ministry of Forests should ensure that an effective means exists, and is applied, for enforcing maintenance responsibilities of secondary users of forest service roads. For this purpose, the ministry should evaluate the effectiveness of such measures as:

    - cancellation of road use permits for non-performance of maintenance;
    - forfeiture of road use permit deposits;
    - penalties and remedial orders under the Code;
    - road user committees;
    - reimbursing primary users when small business users default, and/or maintenance by district offices when small business users default.

3. Government should assess and implement effective procedures for:

- identifying forest service roads that should be maintained at a level that ensures the safety of all users;
- ensuring that such roads are maintained outside the operating season as required for public safety;
- providing for equitable sharing of the cost of maintaining such roads;
- considering other options for maintaining forest service roads with significant public use;
- ensuring that local governments consider access maintenance requirements in land use zoning so that builders and developers anticipate that access and access maintenance are not guaranteed if access is currently provided by a forest service road; and
- ensuring that a process for identifying the responsibility for access road maintenance is initiated at the time of the establishment of parks.

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The Investigation

In May 1997, a resident living beside a forest service road complained to the Forest Practices Board about lack of adequate maintenance of the road by industrial users during the previous winter and spring. Logging traffic had resulted in deterioration of the road surface, with rutting and ponding creating conditions unsafe for driving. He asked that the road be graded before and after every timber sale and that maintenance responsibility be taken over by the Ministry of Transportation and Highways.

The forest service road, commonly known as Hillcrest Road, is in South Island Forest District and intersects Highway 18 at a point 20 kilometres east of Lake Cowichan village on Vancouver Island. The road runs north for 12 kilometres and provides access to Chemainus River Provincial Park. Primarily during the winter months, the road is used by industrial users holding timber licences under the Small Business Forest Enterprise Program, and by two major companies (MacMillan Bloedel Ltd. and Pacific Forest Products Ltd.) for access to harvesting operations on private land. The road is also a popular summer route for light vehicle traffic such as trail bikes and four-by-fours. Hillcrest Road provides access to four private residences, all of which are located within two kilometres of Highway 18.

It is the practice of the Board to encourage resolution of complaints during the course of an investigation wherever possible. An inspection by South Island Forest District staff in March 1997 confirmed a need for both surface maintenance and structural repairs on Hillcrest Road. The district instructed the holders of road use permits to come to a surface maintenance agreement. They did so in July 1997, and Pacific Forest Products, the most active user, carried out the required surface maintenance and billed other users for their share of the work. Structural repairs were the ministry's responsibility and were completed in October 1997. The complainant was satisfied with these results. Thus, the particular circumstances that gave rise to the complaint were resolved during the investigation. The Board continued its investigation in order to identify and examine broader issues related to the maintenance of forest service roads with significant public use.

The investigation of the complaint focused on three primary issues:

- Who is responsible for surface and structural maintenance of Hillcrest Road?
- Did those responsible for maintaining the road comply with Code requirements?
- What role does or should government agencies other than the Ministry of Forests have in the maintenance of forest service roads with significant public traffic?

Investigation Findings

Responsibility for Maintenance of Hillcrest Road

Hillcrest Road is designated a forest service road under the *Forest Act*.

Section 63(6) of the Forest Practices Code of British Columbia Act provides that:

> "Subject to subsection 7, the district manager must maintain forest service roads in accordance with the requirements of
>
> (a) any forest development plan; and
>
> (b) the regulations and standards,
>
> until the road is deactivated under a forest development plan …."[1]

Section 63(7) provides that:

> "The district manager may require the holder of a road use permit that authorizes the use of a forest service road to assume all or part of the responsibility for maintaining the road."

Holders of timber harvesting rights who require forest service road access must obtain a road use permit from the district manager under the *Forest Act*. The terms and conditions of the permit, to be determined by the district manager, must be consistent with both the *Forest Act* and *Forest Practices Code of British Columbia Act*.

It is general practice in the province for the Ministry to delegate road maintenance responsibilities to holders of road use permits under section 63(7). Ministry of Forests budgets for road maintenance have sharply declined in recent years. Ministry policy is to place a considerable portion of the cost of maintenance on road users. At the time of the complaint, the South Island Forest District delegated responsibility for surface maintenance to road users but retained responsibility for major structural repairs.

Where several operators use a road in the forest district, the district manager may designate one permit holder to be the "primary user" or "maintainer". ("Primary user" and "secondary user" are no longer terms in standard use but will be used here to distinguish between different levels of responsibility for maintenance.) MacMillan Bloedel, which uses Hillcrest Road to access private holdings, was designated the primary user several years ago. The road use permit directed the company to carry out the maintenance obligations set out in an attached schedule: "all surface maintenance of the right-of-way, road surface, permanent and temporary bridge structures, cattleguards, culverts, barriers, signs and junctions."

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[1] There has been a minor amendment since, but the effect in the circumstances of this complaint is unchanged.

There is no standard method for designating a primary user; it may be the first user to obtain a road use permit or the user that hauls the highest volume of timber. Where a road is used by small business operators and a major company, primary maintenance responsibility will generally be placed on the major company. A major user is most likely to have a continuing presence on the road and a corresponding interest in keeping the road in good repair.

In the case of Hillcrest Road, MacMillan Bloedel was the first user and had been designated the primary user for many years, even though the company was not active for much of that period. In the winter of 1996-97, MacMillan Bloedel hauled little timber on the road. District staff did not consider this to be a desirable state of affairs but maintained that it was not practical to delegate maintenance responsibilities to small business users with a temporary presence on the road; it was desirable to have continuity. There was, however, another major company that was active on Hillcrest Road—Pacific Forest Products, which used the road for access to private land and hauled more timber than any other user during the winter of 1996-97. Like Pacific Forest Products, all holders of small business licences were designated secondary users of the road.

The road use permit provided for secondary use required each permittee, or secondary user, to make an agreement with the primary user to contribute to the cost of maintaining the road. The district manager was to receive a copy of the road use agreement. Until that occurred, permittees could not use the road without authorization of the district manager.

When MacMillan Bloedel, as a primary user of a forest service road, is active, it maintains the road and invoices other users based on the volumes and distances each user hauls. When not active (as in the case of Hillcrest Road), the company negotiates a road use agreement with secondary users. Such a "Non-Exclusive Road Use Licence" requires the secondary user to keep the road in a state of repair acceptable to MacMillan Bloedel and leave it in acceptable condition upon termination. If the secondary user is the sole user, it is responsible for maintaining the road at its own expense by keeping the road in good repair and safe operating condition. When two or more secondary users are active, the company directs them to come to an agreement among themselves for sharing maintenance responsibilities; however, this requirement is not included in the licence document provided by the company.

In the winter and spring of 1997, MacMillan Bloedel hauled less than 3 percent of the timber carried on the road. The remainder was hauled by the five secondary users — Pacific Forest Products Ltd. and four small business operators.

The road use permit for secondary users required that permittees establish and/or join a road user committee that prepares road use requirements including the details of the maintenance fee structure and monitoring procedures. In practice, however, this does not occur on the coast in the normal course of activities. Instead, MacMillan Bloedel uses the licensing system described above.

Finding #1

The district manager delegated his statutory responsibility for surface maintenance of Hillcrest Road to MacMillan Bloedel Ltd., while retaining responsibility for major structural repairs. Under contractual agreement with MacMillan Bloedel Ltd., other industrial users on Hillcrest Road agreed to contribute to surface maintenance of the road.

Maintenance Deficiencies on Hillcrest Road

Under the Code, the district manager is required to maintain forest service roads whether or not they are in active use until such roads are actually deactivated. Many roads in the vast network on southern Vancouver Island experienced significant deterioration in the years before the Code was put into place. Hillcrest Road, constructed approximately 30 years ago, is an example. The area in which the residences are located, within two kilometres of the highway, is the most sound section of the road.

From the perspective of both the ministry and major licensees, limitations on staff and financial resources make it difficult to maintain such roads to Code standards. MacMillan Bloedel indicated that their maintenance costs virtually doubled in some areas of the province following the implementation of the Code.

Finding #2

Hillcrest Road has deteriorated over many years, increasing the difficulty and cost of maintenance.

The merging of two forest districts—Duncan and Port Alberni—into the South Island Forest District in May 1997 further strained the ability of district staff to carry out maintenance responsibilities. Moreover, as discussed later in this report, Ministry of Transportation and Highways funding assistance for forest service roads (those without active industrial use) has significantly diminished in recent years.

The difficulty of meeting Code maintenance requirements is magnified for roads with multiple industrial users. Keeping track of multiple users and ensuring that they undertake maintenance responsibilities is a significant task, both for ministry staff and for the primary user.

District staff do not notify primary users when small business timber sales are awarded or road use permits are issued. Secondary users are required to provide the district manager with a letter of agreement with the primary user prior to commencing operations, but

primary users are not always aware of who is using the road. One major company recounted difficulty in determining the identity of other users operating on roads for which it holds maintenance responsibility.

The nature of small business sales is such that successful bidders may operate in an area only for a short time and may not return. When they leave, they can be difficult to locate; corporate identities can quickly change. If a secondary user fails to meet the conditions of its agreement with a primary user, the primary user must either enforce the agreement or pay for the maintenance itself. Forest districts do not collect road permit deposits from small business users, which generally have little capital available. Nor can a district apply licence deposits to road maintenance, as the contractual maintenance obligation of small business users is with the primary user, not the district.

Surface maintenance of Hillcrest Road was further hampered by a shortage of good surface material on the road. Additionally, some secondary users failed to grade the road as agreed in their contracts with MacMillan Bloedel. MacMillan Bloedel told the Board that it performed routine maintenance on the road when it was active, but did not do so during times of exclusive use by secondary users. Because MacMillan Bloedel was rarely active on the road, it could not readily monitor the activities of other users. Overall, district staff and MacMillan Bloedel acknowledged that road maintenance monitoring "fell between the cracks" during the winter of 1996-97.

Finding #3

Hillcrest Road was not adequately maintained during the winter of 1996-97.

After noting deficiencies in the road surface during an inspection in March 1997, district staff instructed the road users to arrange remedial surface maintenance. The users met in July and agreed to apportion the cost of grading, brushing, ballasting, and culvert replacement. As the heaviest user during the previous winter, Pacific Forest Products agreed to do the work, which was completed by the early fall and approved by the ministry. The work cost almost twice the estimated amount. Once the work had been completed, Pacific Forest Products had significant difficulty collecting the agreed-upon amounts from three of the four small business operators involved, whose sales had already been completed and signed off.

District staff identified a structural problem near the approach to the complainant's driveway. Water was trapped by a large berm on the low side of the road, where shade from trees discouraged evaporation, and a pond of water formed. Structural repairs were needed, so the district installed culverts and a new surface by October 1997. The complainant expressed satisfaction with the result, noting that the road was "the best it's ever been".

Finding #4

Following inspection of Hillcrest Road by district staff in March 1997, the district manager ordered the road users to correct surface deficiencies and had district staff repair structural deficiencies.

Compliance with Code Requirements

Surface maintenance

Section 63(2) of the *Forest Practices Code of British Columbia Act* provided that a person who is required to maintain the road under subsection (7) must do so in accordance with the requirements of any forest development plan or access management plan[2], the Act and regulations, and a road use permit.

Forest development plans generally provide minimal information regarding maintenance requirements. The 1996-2001 forest development plan for the Duncan Forest District Small Business Forest Enterprise Program provided only that "the *Forest Practices Code Act of BC* and *Forest Road Engineering Guidebook* will be adhered to". Section 10(1) of the Act provides that a forest development plan must include maps and schedules describing the timing of road maintenance. Because the complaint focused on actual work done, and because maintenance provisions were detailed in road use permits, the Board did not examine whether the forest development plan met Code requirements.

Section 18(1)[3] of the *Forest Road Regulation* provides that:

> "A person who maintains a road under section 63 of the Act must inspect the road and repair the road to ensure that:
>
> (a) the structural integrity of the road prism and clearing width are protected,
>
> (b) the drainage systems of the road are functional…,
>
> (d) the road can safely be used by industrial users, even if industrial use has been temporarily suspended."

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[2] Since the time of the complaint, section 63(2) has been amended to delete the reference to access management plans. Consequently, these have been phased out.

[3] Formerly section 17. Amendments to the regulation in 1998 renumbered section 17 as section 18 without altering the wording. References in this report refer to the current number of the section.

As noted previously, MacMillan Bloedel was designated as the primary user on Hillcrest Road and was "responsible for carrying out all surface maintenance of the right-of-way, road surface, permanent and temporary bridge structures, cattleguards, culverts, barriers, signs and junctions."

This investigation focused on the frequency of grading operations, as that was the complainant's primary concern. No standards have been developed by government regarding Code requirements for road surface maintenance. Instead, guidance to ministry staff and licensees is provided by the *Forest Road Engineering Guidebook*. On grading, the Guidebook advises that roads should be graded at least once a year if grading will be beneficial to increasing road structural capability or will help protect the subgrade and improve the surface for user safety. It also recommends that, to protect the subgrade, roads should be graded before the surface reaches severe stages of washboarding or pothole formation or begins to trap water in windrows or ruts. In other words, the frequency of grading is a matter of discretion, based on local conditions.

As a coastal road subject to wet winter conditions and with relatively heavy industrial use, Hillcrest Road requires regular grading. This was not provided in the winter of 1996-97. Some required gradings were not performed by secondary users who had agreed to provide those services. As the primary user responsible for road maintenance under section 63(2) of the Act, MacMillan Bloedel failed to comply with Code requirements by failing to ensure that secondary road users performed maintenance.

The Board acknowledges the difficulty faced by MacMillan Bloedel in undertaking these responsibilities as a non-active user of the road. In the circumstances of this complaint, the non-compliance had no significant consequences to the environment. The consequences were, however, significant to the complainant, as a resident of the road. The Board's concern about delegation of maintenance responsibilities to a company without an active presence on the road is addressed in the recommendations at the end of this report.

Finding #5

MacMillan Bloedel Ltd., as the designated primary user on Hillcrest Road, failed to ensure that the road was graded with sufficient frequency during the 1996-97 operating season and therefore did not comply with Code requirements for road maintenance. The consequences with regard to protection of the environment were not significant. They were, however, significant to the complainant, as a resident living on the road and concerned about public safety.

Structural road repairs

Section 18(1) of the *Forest Road Regulation* provides that "a person who maintains a road under section 63 must inspect the road and repair the road" to ensure that four

objectives are met: protection of structural integrity, functionality of drainage systems, minimization of transport of sediment, and safe conditions for industrial users.

Section 18 (3) adds:

> "If, as a result of inspection under subsection (1), the person required to maintain a road under section 63 of the Act, or the district manager, is of the opinion that there are deficiencies in the road, the person required to maintain the road must remedy the deficiencies by the earliest of the following:
>
> (a) a time that is reasonable taking into account the risk to the road, its users, and the environment;
>
> (b) a time specified in the inspection report;
>
> (c) a time determined by the district manager."

On Hillcrest Road, district staff inspected the road in March 1997 and identified surface and structural deficiencies. The surface deficiencies were corrected by early fall by the road users at the direction of the district manager, as described above.

With regard to structural deficiencies, the Board limited its consideration to the area of concern to the complaint—ponding near the mouth of his driveway. The district identified a structural deficiency at this location, where a large berm caused water to collect and shade inhibited evaporation. The district repaired this deficiency at the end of the summer, when wet conditions and industrial use were minimal. In the Board's view, these repairs were undertaken within a reasonable time after the inspection, no date having been specified in an inspection report.

Finding #6

The district manager complied with the requirements of section 18 of the Forest Road Regulation by remedying road deficiencies identified during an inspection of Hillcrest Road within six months, immediately before the next wet season.

It is important to note, with regard to the section 18(3) requirement that risk to users be considered, that section 18(1) requires only that persons responsible for maintaining forest service roads ensure that "the road can safely be used by *industrial* users" [emphasis added]—that is, for transportation of natural resources. Most public recreational use would likely occur during the summer, while the road remained in poor condition. The public uses such roads but there is no requirement to keep the roads safe for them; they use the roads at their own risk. Thus, the district's lack of consideration of the needs of residential traffic or summer recreational users in setting a date for repair was consistent with the regulatory requirements.

Finding #7

The Code does not require that forest service roads be maintained to a level that ensures public safety and convenience. It requires only that safe use by industrial users be ensured.

Maintenance Roles of other Ministries on Hillcrest Road

While forest service roads are intended for industrial use, many of them are regularly travelled by the public, either for recreational purposes or to reach residences. Hillcrest Road is unusual in that it not only provides access to several residences but also provides the only road access to a provincial park, with non-industrial use being heaviest between spring and fall. Do other government ministries have an obligation to maintain roads for such non-industrial users?

Ministry of Transportation and Highways

In some parts of the province, such as the Kamloops and Cariboo forest regions, private residences on forest service roads are common. On Vancouver Island they are relatively rare. In some situations, the Ministry of Transportation and Highways provides funding assistance to the Ministry of Forests for the maintenance of forest service roads that provide access to residences. Under a 1992 Memorandum of Understanding between the two ministries, this assistance is not available for roads with industrial use. As a result of cuts to the budget of the Ministry of Transportation and Highways, even assistance on the non-industrial forest service roads has been scaled back from about $3 million, province-wide, to about $700,000. According to ministry staff, there is no budget available for any additional inventory of roads requiring maintenance assistance.

Staffs of both ministries anticipate increasing numbers of complaints from forest service road residents about declining levels of maintenance in comparison to that experienced in the past. On the other hand, those who purchase property on forest service roads are assumed to do so with the understanding that these roads are not maintained for general public use.

Ministry of Environment, Lands and Parks

Hillcrest Road is heavily used by trail bikes, all-terrain vehicles, and four-wheel drive vehicles en route to the undeveloped Chemainus River Provincial Park and other areas popular for recreational use. District staff consider that high-speed travel by light vehicles contributes as much to deterioration of the road surface as does industrial use.

Some provincial parks on southern Vancouver Island and virtually all provincial parks on the northern Island have no public highway access. In several of these cases, the only available access is by forest service road. No effective infrastructure exists for

construction and maintenance of access roads to the several new parks created by the Vancouver Island Land Use Plan and other initiatives. Like other parts of government, BC Parks (a division of the Ministry of Environment, Lands and Parks) has experienced cuts to its budget in recent years. Basically, no money is allocated for road maintenance outside parks. BC Parks takes the position that the *Park Act* provides no mandate for the expenditure of funds outside park boundaries. Nevertheless, the existence of a park at the end of a road suggests that the road is intended for public travel.

As government has moved towards a "user pay" philosophy, it has significantly reduced funding for maintenance of forest service roads used by the public. It has not, however, introduced any mechanism by which non-industrial users, including recreational and residential traffic, are required to contribute to road maintenance costs. As a result, the burden of road maintenance continues to fall entirely on industrial users (and, to a much lesser extent, the Ministry of Forests), who incur the additional maintenance expense created by heavy use of industrial roads by public traffic. Because industrial users are required only to do sufficient maintenance to make roads safe for industrial travel, there is no guarantee that roads will be safe for public travel or in a condition desired by the public using light passenger vehicles, not heavy trucks.

Finding #8

Although Hillcrest Road provides access to residences and a provincial park, and although public traffic contributes to road deterioration, responsibility for maintenance falls solely on the district manager and industrial users to whom that responsibility is delegated. The standard for maintenance is industrial, not public, use.

Provincial Road Maintenance Issues

Investigation of this complaint raised two issues that have implications beyond the scope of the complaint. Maintenance shortcomings on publicly travelled forest service roads have caused concern throughout the province. These shortcomings need to be addressed.

Public Safety on Forest Service Roads

Section 18(1)(d) of the *Forest Road Regulation* provides that: "A person who maintains a road under section 63 of the Act must inspect the road and repair the road to ensure that … (d) the road can safely be used by industrial users, even if industrial use has been temporarily suspended." In other words, the person who maintains a road (usually the district manager or the company to which he or she delegates maintenance responsibilities) is required to ensure only that a road is safe for industrial use, not that it is safe for travel by the general public.

The Ministry of Forests considers industrial use to mean transportation of natural resources. In interpreting the meaning of "industrial user", the ministry relies on the definition of "industrial road" in the *Highway (Industrial) Act*. This Act defines "industrial road" to mean "a road constructed or existing for transportation by motor vehicle of (a) natural resources, raw or manufactured, or (b) machinery, materials or personnel...." In addition, section 2 of the *Forest Road Regulation* provides that if this regulation conflicts with a regulation under the *Workers Compensation Act*, the latter prevails. Section 26.79 of the *Occupational Health and Safety Regulation* provides that roads "used by vehicles transporting workers, logs or other forest products in forestry operations must be constructed and maintained to a standard which will permit safe transit". In short, the Code requires that forest service roads are required to be maintained to ensure the safety of industrial vehicles and the workers they carry.

Industrial use occurs primarily between fall and spring, and surface maintenance is largely restricted to this period of the year. Yet damage to roads with significant public travel (especially recreational travel) occurs mainly in the summer, when industrial users are less active and road maintenance is at a minimum. In short, maintenance of roads to ensure safe public travel does not occur when it is most needed. Whether or not roads are safe for public traffic is, of course, to some extent a matter of subjective interpretation. Exercising due caution and driving an appropriate vehicle, the public generally can travel safely on forestry roads. However, washboarding and potholing, in particular, can create unsafe conditions at higher speeds and in adverse weather conditions.

Roads that provide access to communities (such as Bamfield and Zeballos on Vancouver Island) and experience heavy recreational use, or provide access to residences are particularly controversial. Currently, district managers may identify certain roads for increased maintenance, but ministry maintenance funds are constantly shrinking.

In early 1999, the Resource Tenures and Engineering Branch of the Ministry of Forests prepared and circulated a discussion paper on road maintenance funding and responsibilities for comment. In addition to dealing with other matters, "A Framework for Managing Forest Service Roads" addresses the following two issues:

- how to ensure that publicly used forest service roads are maintained when companies responsible for maintenance are temporarily absent—e.g., during the summer or for longer periods, and

- how to allocate funding responsibilities for maintenance of forest service roads.

The paper presents several options for resolving these perennial problems.

One option for enhancing public safety on forest service roads is to place the obligation to maintain roads outside the operating season on the forest industry. This option, if implemented, would apply only to roads on which industrial users are active.

An alternative or additional solution is to provide for funding sources outside the forest industry and Ministry of Forests.

Funding the Cost of Road Maintenance

As it now stands, sole responsibility under the Code for road maintenance lies with the district manager and industrial road users (generally, major companies and small business licensees) to whom he or she delegates that responsibility. This means that industrial users bear the cost of maintaining roads that are travelled by the public and to differing degrees require repair as a result of public use. Industrial users argue that this is unfair. In addition, there is little incentive (other than good public relations) for them to put extra money into maintaining publicly travelled roads.

This is a particularly sensitive issue today because of the increased cost of maintaining roads under the Code and because of the following government budgetary restraints:

- Ministry of Forests road maintenance budgets have been greatly reduced and are reported to be approaching zero;
- Ministry of Transportation and Highways funding for subsidization of maintenance costs for publicly travelled forestry roads has been greatly reduced (from $3 million a few years ago to well under $1 million today); and
- the Parks division of the Ministry of Environment, Lands and Parks has no budget for road maintenance outside park boundaries.

Satisfactory road maintenance cannot occur unless government provides the necessary leadership to designate responsibility and appropriate funding sources. The following are several possible options described in the discussion paper:

- funding contributions by the Ministry of Transportation and Highways, Ministry of Environment, Lands and Parks, Ministry of Small Business, Tourism and Culture, and the federal government, with the remaining shortfall to be funded through the Ministry of Forests;
- entire funding of forest service road maintenance by the forest industry and SBFEP;
- privatizing forest service road maintenance with the private sector funding maintenance costs through user tolls or tax levies on gasoline, fishing and hunting permits, lodges, farms, etc.; or
- transfer responsibility to the Ministry of Transportation and Highways for maintaining forest service roads whose major use is public traffic.

At a time when all government agencies are feeling the pinch of funding cutbacks and the forest industry faces increasingly high costs of operation, there are no easy answers. Nevertheless, solutions must be found. Many members of the public have no choice but to travel on forest service roads, and their safety must be assured. The Resource Tenures and Engineering Branch is to be commended for its timely initiative. It is now time for the government to act on that initiative.

Conclusions

1. The district delegated responsibility for surface maintenance of Hillcrest Road to MacMillan Bloedel Ltd. and retained responsibility for structural repairs.

2. Some companies using the road failed to conduct surface maintenance in accordance with their contracts with MacMillan Bloedel. Although MacMillan Bloedel made little use of the road in 1996-97, it was the designated primary user, and was responsible for surface maintenance. MacMillan Bloedel did not comply with Code requirements.

3. The non-compliance with Code requirements for road maintenance was significant to the complainant, but did not result in environmental damage.

4. The district complied with Code requirements. District staff noted deficiencies in the road surface and structure, and issued instructions to users to come to an agreement for surface maintenance. District staff also identified and remedied structural deficiencies on the road.

5. The complainant's concerns were satisfied by the work undertaken by the district.

6. Several factors result in limited maintenance of publicly travelled forest service roads. These include:

    - The Code requires forest service roads to be kept safe for industrial users but does not require maintenance of these roads to ensure public safety;
    - Ministry of Forests usually delegates responsibility to those industrial users;
    - Public use of forest service roads primarily occurs in summer months when industrial users are absent and little surface maintenance occurs; and
    - Government funding cuts are further restricting maintenance on publicly travelled forest service roads.

7. The public—including recreational and residential users—travel on forest service roads at their own risk. The Board concludes that the government needs to act to ensure that adequate maintenance is provided to publicly travelled forest service roads. The Ministry of Forests' 1999 discussion paper "A Framework for Managing Forest Service Roads" is a good start.

Complaint Remedies

The complainant asked that grading be conducted before and after every timber sale and that responsibility for maintenance of Hillcrest Road be taken over by the Ministry of Transportation and Highways. The Board considered that the contractual requirement imposed by MacMillan Bloedel on secondary road users was adequate for satisfactory road maintenance, provided that there was adequate monitoring of the activities of

secondary users and adequate enforcement to ensure that their contractual obligations are met.

Since this complaint, the Ministry of Forests has agreed to transfer responsibility for surface maintenance of Hillcrest Road from MacMillan Bloedel to the major industrial user, Pacific Forest Products.

The Board does not agree with the complainant's suggestion that maintenance responsibility for Hillcrest Road be taken over by the Ministry of Transportation and Highways. However, it does believe that responsibility for maintenance of publicly travelled forest service roads needs to be examined and fairly apportioned. This issue is addressed in the recommendations.

Recommendations

The Board makes the following recommendations:

1. District managers should:
   a) annually review designation of responsibility for maintenance of forest service roads to ensure that those responsible for maintenance have an active presence on the road during the operating season; and
   b) notify those responsible for maintenance when small business timber sales are awarded and road use permits are issued.
2. The Ministry of Forests should ensure that an effective means exists, and is applied, for enforcing maintenance responsibilities of secondary users of forest service roads. For this purpose, the ministry should evaluate the effectiveness of such measures as:
   - cancellation of road use permits for non-performance of maintenance;
   - forfeiture of road use permit deposits;
   - penalties and remedial orders under the Code;
   - road user committees;
   - reimbursing primary users when small business users default, and/or maintenance by district offices when small business users default.
3. Government should assess and implement effective procedures for:
   - identifying forest service roads that should be maintained at a level that ensures the safety of all users;
   - ensuring that such roads are maintained outside the operating season as required for public safety;
   - providing for equitable sharing of the cost of maintaining such roads;

- considering other options for maintaining forest service roads with significant public use;
- ensuring that local governments consider access maintenance requirements in land use zoning so that builders and developers anticipate that access and access maintenance are not guaranteed if access is currently provided by a forest service road; and
- ensuring that a process for identifying the responsibility for access road maintenance is initiated at the time of the establishment of parks.